

Title 2. California Public Employees' Retirement System

NOTICE OF PROPOSED REGULATORY ACTION

NOTICE IS HEREBY GIVEN that the Board of Administration (Board) of the California Public Employees' Retirement System (CalPERS) proposes to take the action described below in the Informative Digest after considering public comments, objections, or recommendations.

I. PROPOSED REGULATORY ACTION

In this filing, the Board proposes to add section 599.517, entitled "Termination of Enrollment in Basic Health Benefits Plan for Failure to Enroll In Part A and Part B of Medicare" to Title 2 of the California Code of Regulations. This proposed regulatory action pertains to the termination of enrollment in CalPERS basic health plans for individuals who are eligible for Medicare Parts A and B.

II. WRITTEN COMMENT PERIOD

Any person interested may submit written comments relevant to the proposed regulatory action. The written comment period closes at 5:00 pm on May 10, 2004. The Regulations Coordinator must receive all written comments by the close of the comment period. Comments may be submitted via fax at (916) 326-3379; email at the following address: marilyn_clark@calpers.ca.gov; or mailed to the following address:

Marilyn Clark, Regulations Coordinator
California Public Employees' Retirement System
400 P Street, Room 1120
P.O. Box 942702
Sacramento, California 94229-2702

Telephone: (916) 326-3007

III. PUBLIC HEARING

Comments on the proposed actions will also be taken at a public hearing to be placed on the agenda of the regularly scheduled meeting of the CalPERS Health Benefits Committee:

May 18, 2004
10:00 a.m. (or immediately following the meeting of the Benefits and Program Administration Committee)
California Public Employees' Retirement System
400 P Street
Sacramento, California 95814

IV. ACCESS TO HEARING ROOM

The hearing room will be accessible to persons with mobility impairments, and it can be made accessible to persons with hearing or vision impairments upon advance request to the Regulations Coordinator.

V. AUTHORITY AND REFERENCE

Government Code section 22773 grants the CalPERS Board “all powers reasonably necessary to carry out the powers and responsibilities expressly granted or imposed upon it” under PEMHCA. In addition, Government Code section 22775 empowers the CalPERS Board to adopt all necessary rules and regulations to carry out the provisions of PEMHCA, “including but not limited to establishing the scope and content of a basic health benefits plan, regulations fixing reasonable minimum standards for health benefits plans, regulations fixing the time, manner, method and procedures for determining whether approval of any plan should be withdrawn, and regulations pertaining to any other matters it may be expressly authorized or required to provide for by rule or regulation by the provisions of this part.” When adopting such rules and regulations, section 22775 directs the Board to “be guided by the needs and welfare of individual employees, particular classes of employees, and of the State, as well as prevailing practices in the field of prepaid medical and hospital care.” The CalPERS Board is granted additional rulemaking authority with regard to specific sections of PEMHCA by Government Code sections 22775.5, 22777, 22810 and 22861.

Proposed section 599.517 would implement, interpret and make specific Government Code Section 22819.

VI. INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Government Code section 22819 provides that “Employees, annuitants, and their family members who become eligible on or after January 1, 1985, for Part A and Part B of Medicare shall not be enrolled in a basic health benefits plan. If the employee, annuitant, or their family member is enrolled in Part A and Part B of Medicare, he or she may enroll in a supplement to Medicare plan. This section shall not apply to employees and family members which are specifically excluded from enrollment in a supplement to Medicare plan by federal law or regulation.”

Proposed section 599.517 provides that employees, annuitants, and their family members who are eligible for Medicare Part A and fail to timely enroll in Medicare Part B shall, pursuant to the conditions set forth in the regulation, be terminated from enrollment in a basic health plan.

VII. EFFECT ON SMALL BUSINESS

The proposed regulatory action does not affect small business because it applies only to state and public agency participation under the PEMHCA.

VIII. DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

- A. MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS: The proposed regulatory action does not impose a mandate on local agencies or school districts.
- B. COST OR SAVINGS TO ANY STATE AGENCY: CalPERS estimates state savings in the approximate amount of \$2.5 million annually beginning fiscal year 2004 - 2005.
- C. COST TO ANY LOCAL AGENCY OR SCHOOL DISTRICT: The proposed regulatory action does not impact costs or savings for any local agency or school district, such that costs would qualify for reimbursement under Government Code section 17500 et seq.
- D. NONDISCRETIONARY COSTS OR SAVINGS IMPOSED ON LOCAL AGENCIES: CalPERS estimates local savings in the approximate amount of \$750,000 annually beginning fiscal year 2004 - 2005.
- E. COSTS OR SAVINGS IN FEDERAL FUNDING TO THE STATE: The proposed regulatory action does not impact any federal funding to the state.
- F. ADVERSE ECONOMIC IMPACT: CalPERS has made an initial determination that the proposed regulatory actions will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of business in California to compete with business in other states.
- G. COST IMPACT ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES: CalPERS is not aware of any cost impacts that a representative private person, or business would necessarily incur in reasonable compliance with the proposed action.
- H. IMPACT ON JOBS AND BUSINESSES WITHIN CALIFORNIA: The proposed regulatory action will not: (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.
- I. EFFECT ON HOUSING COSTS: The proposed regulatory action has no significant effect on housing costs.

IX. CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is

proposed or would be as effective and less burdensome to affected private persons than the proposed action. The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation at the above mentioned hearing or during the written comment period.

X. CONTACT PERSONS

Please direct inquiries concerning the substance of the proposed regulatory action to:

Doug McKeever, Assistant Division Chief
Office of Employer & Member Health Services
California Public Employees' Retirement System
P.O. Box 942714
Sacramento, California 94229-2714

Telephone: (916) 326-3579
Fax: (916) 658-1277
E-mail: doug_mckeever@calpers.ca.gov

Please direct requests concerning processing of this regulatory action to Marilyn Clark, Regulations Coordinator, at (916) 326-3007, or Barbara Galli, backup Regulations Coordinator, at (916) 558-4098.

XI. AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The entire rulemaking file is available for public inspection through the Regulations Coordinator at the address shown above. To date the file consists of this notice, the proposed text of the regulation, and the Initial Statement of Reasons (ISR). A copy of the proposed text and the ISR is available at no charge upon telephone or written request to the Regulations Coordinator.

The Final Statement of Reasons can be obtained, once it has been prepared, by written request to Marilyn Clark, Regulations Coordinator, at the address shown in Section II.

For immediate access, the regulatory material regarding this action can be accessed at CalPERS' web site at www.calpers.ca.gov under Members, About CalPERS, Proposed Regulatory Actions.

XII. AVAILABILITY OF MODIFICATIONS TO PROPOSED REGULATION

The Board may, on its own motion or at the recommendation of any interested person, modify the proposed regulation after the public comment period has closed. It may adopt section 599.517 as modified if the changes are sufficiently related to the original text so the public could have anticipated them.

If the Board modifies its regulatory action in this manner, it will prepare a comparison of the original proposed text and the modifications for an additional public comment period of not less than 15 days prior to the date on which the Board adopts, amends or repeals the resulting regulation. A copy of the comparison text will be mailed to all persons who submitted written comments or asked to be kept informed as to the outcome of this regulatory action.

Section 599.517. Termination of Enrollment in Basic Health Benefits Plan for Failure to Enroll In Part A and Part B of Medicare

Except as otherwise provided under federal law or regulation, employees, annuitants and their family members who, on or after January 1, 1985, become Medicare-eligible, as defined below, may not be enrolled in a basic health benefits plan. Failure of a Medicare-eligible basic plan member to enroll in Part B of Medicare and in a Medicare Plan will result in termination of basic plan coverage.

(a) As used in this section and in Government Code section 22819:

- (1) "Post-1997 Basic Health Plan Enrollees" means those annuitants and their family members who (a) have been continuously enrolled in a basic health benefits plan on or after January 1, 1998, and (b) turned 65 on or after January 1, 1998 and before January 1, 2005.
- (2) "Prospective Medicare Beneficiary" means an annuitant, employee or family member who is enrolled in a basic health benefits plan and, at the time of notification hereunder, is within the Medicare Initial Enrollment Period.
- (3) "Medicare-Eligible" means eligible for Medicare Part A without cost and Part B.
- (4) "Medicare Plan" means a Medicare supplement or Medicare-risk health benefits plan approved or contracted for by the board.
- (5) "Deferral of Part B Enrollment" means deferral of Part B enrollment by a Medicare-eligible state or a contracting agency employee who, pursuant to federal law and regulations, has deferred enrollment in Part B of Medicare because he or she is actively employed and covered by a basic health benefits plan by virtue of that employment.

(b) Enrollment and continuation in a basic health benefits plan.

- (1) Except as set forth below, Post-1997 Basic Health Plan Enrollees and Prospective Medicare Beneficiaries who are Medicare-eligible may not continue to be enrolled in a basic health benefits plan.
- (2) A Medicare-eligible individual who applies for initial enrollment in a basic health benefits plan, or re-enrollment after a break in coverage, shall not be permitted to enroll in a basic plan notwithstanding the fact that he or she was enrolled in an employer-sponsored basic health plan prior to, or on the date of, the application for enrollment.
- (3) A Medicare-eligible state or contracting agency employee who has deferred his or her enrollment in Part B, may continue to be enrolled in a basic health benefits plan until the earlier of retirement or termination of employment. Such employee must notify the Board immediately upon termination of his or her

deferred status and must enroll in Part B of Medicare during his or her special enrollment period.

(c) Notice of Requirement to Enroll in Medicare.

- (1) Post-1997 Basic Health Plan Enrollees. No later than December 1, 2004, the Board shall provide notice to Post-1997 Basic Health Plan Enrollees of their requirement to enroll in Part B of Medicare. This notice shall provide that (a) if they are Medicare-eligible they may not remain in a basic plan, (b) if they are eligible for Part A of Medicare without cost, they must enroll in Part B of Medicare and in a Medicare Plan in order to retain health plan coverage; and (c) the failure to provide the board with satisfactory evidence of enrollment in Part B, ineligibility for Part A without cost, or deferral of Part B enrollment will result in the termination of their basic plan enrollment.
- (2) Prospective Medicare Beneficiaries. Commencing four (4) months prior to a Prospective Medicare Beneficiary's 65th birth month, the Board shall provide notice of the requirement to enroll in Medicare. This notice shall inform the Prospective Medicare Beneficiary that if he or she is Medicare-eligible, he or she may not remain in a basic health benefits plan and must timely enroll in Part B of Medicare and a Medicare Plan in order to retain health plan coverage. The notice shall also inform the Prospective Medicare Beneficiary that failure to provide the board with satisfactory evidence of enrollment in Part B, ineligibility for Part A of Medicare without cost, or deferral of Part B enrollment will result in the termination of his or her basic plan enrollment.

(d) Termination of enrollment in a basic health benefits plan.

- (1) On or before March 31, 2005, Post-1997 Basic Health Plan Enrollees shall provide the Board with satisfactory evidence of application for enrollment in Part B of Medicare during the 2005 Medicare open enrollment period, ineligibility for enrollment in Part A of Medicare without cost, or deferral of Part B enrollment. Failure to do so will result in termination of basic plan enrollment effective April 1, 2005.
- (2) On or before June 1, 2005, a Post-1997 Basic Health Plan Enrollee who applied to enroll in Part B of Medicare during the 2005 open enrollment period shall provide the Board with satisfactory evidence of enrollment in Part B of Medicare and an application for enrollment in a Medicare plan. Failure to do so will result in termination of basic plan enrollment effective July 1, 2005.
- (3) The basic plan enrollment of a Prospective Medicare Beneficiary who fails to provide to the Board satisfactory evidence of enrollment in Part B of Medicare, ineligibility for Part A of Medicare without cost, or deferral of Part B enrollment by

the last day of his or her birth month, will be terminated effective the first of the subsequent month.

- (4) To the full extent permitted by law, the Board shall have no liability for any costs, losses or damages incurred by any person as a result of, or arising from or related to, the termination of basic health benefits plan coverage in accordance with this section.

(e) Enrollment in a Supplemental Plan.

- (1) Post-1997 Basic Health Plan Enrollees and Prospective Medicare Beneficiaries who are Medicare-eligible may enroll in a Medicare Plan by submitting an application to the Board and proof of enrollment in Parts A and B of Medicare. Enrollment in the Medicare Plan shall be effective on the date Medicare coverage became effective or the first of the month following receipt of the application, whichever is later.

- (2) Notwithstanding (1) above, a person whose coverage has been terminated pursuant to subsection (d) and who subsequently submits evidence of enrollment in Parts A and B of Medicare may only enroll in a Medicare Plan under the following conditions:

(A) If the application and proof of enrollment in Parts A and B of Medicare are submitted within 90 days of the date that basic plan coverage terminated, enrollment in the Medicare Plan shall be retroactive to the effective date of Medicare coverage or a date 90 days prior to the submission of evidence of Medicare enrollment, whichever is later.

(B) If the application and proof of enrollment in Parts A and B of Medicare are submitted more than 90 days after the date that basic plan coverage terminated, the effective date of enrollment shall be the first of the month following receipt of the application or, if applicable, the effective date of coverage under open enrollment.

(f) Enrollment in a basic health benefits plan after termination.

If a person whose basic plan coverage has been terminated pursuant to subsection (d) subsequently submits satisfactory written confirmation that he or she is either not eligible for Part A of Medicare without cost or has deferred enrollment in Part B of Medicare, he or she may enroll in a basic health benefits plan under the following conditions:

- (1) If the documentation is received by the Board within 90 days of the date that coverage terminated, re-enrollment in a basic plan shall be retroactive to the date coverage terminated.

(2) An application for enrollment received more than 90 days after basic plan coverage has terminated may be submitted only during a CalPERS Health Benefits Open Enrollment period.

(g) Request for administrative review – termination of enrollment in basic health benefits plan.

(1) A person who has been notified that his enrollment in a basic plan has, or will be, terminated pursuant to subsection (d), may request an administrative review of the termination. The filing of a request for administrative review shall not delay the termination of basic plan enrollment.

(2) A request for administrative review must be filed with the Health Branch Assistant Executive Officer within 90 days of the termination date or the date of the notice of termination, whichever is later. The request for administrative review shall be in writing, state the grounds on which it is requested, the relief that is sought, and include all supporting evidence.

(3) The Health Branch Assistant Executive Officer or his or her designee shall acknowledge the request within 15 days of receipt. The Health Branch Assistant Executive Officer or his or her designee shall review the request and may request additional documentation. Written notification of the decision shall be mailed within 60 days of receipt of all pertinent information.

(h) Request for administrative review – effective date of Medicare Plan enrollment.

(1) A person whose enrollment in a Medicare Plan is delayed pursuant to subsection (e)(2)(B) due to failure to timely submit evidence of enrollment in Part B of Medicare, may seek administrative review of the basis for the delayed effective date. The filing of a request for administrative review shall not delay the termination of basic plan enrollment.

(2) A request for administrative review must be filed with the Health Branch Assistant Executive Officer within 90 days of the notice of the effective date of enrollment in the Medicare Plan. The request for administrative review shall be in writing, state the grounds on which it is requested, the relief that is sought, and include all supporting evidence.

(3) The Health Branch Assistant Executive Officer or his or her designee shall acknowledge the request within 15 days of receipt. The Health Branch Assistant Executive Officer or his or her designee shall review the request and may request additional information. Written notification of the decision shall be mailed within 60 days of receipt of all pertinent information.

NOTE: Authority cited: Sections 22773 and 22775, Government Code
Reference: Section 22819, Government Code

INITIAL STATEMENT OF REASONS

Adoption of section 599.517 Termination of Enrollment in Basic Health Benefits Plan for Failure to Enroll in Part A and Part B of Medicare

Description of Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Regulation is Intended to Address:

Pursuant to its authority under the Public Employees' Medical and Hospital Care Act (PEMHCA), the Board of Administration (Board) of the California Public Employees' Retirement System (CalPERS) administers health benefits for over one million enrollees who are employees and annuitants (and their family members) of the State and of those school and public agency employers that have elected to participate in PEMHCA.

Recent increases in health benefit premiums have caused CalPERS to examine fiscal policy issues related to employee/retiree health care enrollment trends in order to determine if additional cost savings can be achieved. As a result, the Board determined that the continued enrollment of Medicare-eligible annuitants and family members (collectively, Medicare-eligible annuitants) in CalPERS' basic health plans in direct violation of Government Code section 22819 imposes additional premium costs on employers and other individuals enrolled in a basic health plan.

Annuitants utilize health benefit services at higher levels than employees. Increased use directly impacts the cost of a basic health plan resulting in higher premium amounts. The termination of Medicare-eligible annuitants from enrollment in a basic health plan and their enrollment into a Medicare supplemental plan reduces the premiums paid by employers, employees, and non-Medicare-eligible annuitants for a basic health plan. The state and agencies contracting with CalPERS would incur direct savings since, for example, the state (subject to collective bargaining) ordinarily pays 80 percent of the weighted average of the premiums for employees and their family members enrolled in a basic health plan. Lower basic health plan premiums also result in lower state and contracting agency contribution rates for annuitants not eligible for Medicare.

To address the improper enrollment of Medicare-Eligible Annuitants into a basic health plan and in furtherance of the Board's fiduciary duty to all health benefit plan members, the Board approved the proposed regulation, which has been simultaneously submitted as an emergency regulation to implement Government Code section 22819, which states:

Employees, annuitants, and their family members who become eligible on or after January 1, 1985, for Part A and Part B of Medicare shall not be enrolled in a basic health benefits plan. If the employee, annuitant, or their family member is enrolled in Part A and Part B of Medicare, he or she may enroll in a supplement to Medicare plan. This section shall not apply to employees and family members which are specifically excluded from enrollment in a supplement to Medicare plan by federal law or regulation.

Background:

The proposed regulations are necessary at this time because the Board has determined that the continued enrollment of Medicare-eligible annuitants in a basic health plan constitutes an adverse impact on a basic health plan and results in higher costs to the State and agencies contracting with CalPERS due to increased contribution rates. The proposed regulation establishes a procedure and criteria to clearly communicate CalPERS' expectations to annuitants and their family members of their obligation to enroll in Medicare, if eligible, and cancels their coverage if they fail to timely do one of the following:

- Provide evidence of Medicare Part B enrollment, or
- Provide evidence of ineligibility for premium-free Medicare Part A, or
- Provide evidence of Medicare Part A and Part B deferment (they or their spouse are covered by another group health plan based on current employment status)

These provisions are necessary in order to (1) avoid the adverse impact to basic health plan premiums due to the lack of Medicare coordination and projected higher utilization from Medicare-eligible annuitants and their family members improperly enrolled in a basic health plan, (2) avoid the adverse impact to employer contribution rates as a result of increased basic health plan premiums, and (3) provide for the continued enrollment in a basic health plan for annuitants and their family members who are not eligible for Medicare or who are still working.

There are two parts to Medicare coverage: Part A and Part B. Individuals may be eligible for Part A (hospital insurance) if they or a spouse have paid into Social Security and/or Medicare Programs for a specified number of quarters. Currently, there is no cost to individuals who are entitled to Part A, and they are automatically enrolled at age 65.

Individuals are eligible for Part B (medical insurance), when they turn 65; however, they must enroll in Part B and pay a monthly premium for this coverage. The initial enrollment period for Part B coverage is seven (7) months and begins three (3) months prior to the individual's 65th birthday.

The federal government imposes a penalty for late enrollment if a retired individual does not enroll during his or her initial enrollment period. Retirees may enroll during a subsequent general enrollment period (held January-March each year), but must pay a penalty in the form of an on-going premium surcharge of 10% for every 12-month period that he or she did not enroll in Part B.

Specific Purpose: The purpose of this regulation is to enforce section 22819 by establishing enrollment standards for Medicare-eligible annuitants and their family members in order to retain health coverage through CalPERS and, as applicable, ensure appropriate transfer of their enrollment from a basic CalPERS health plan to a CalPERS Medicare plan.

Necessity: This regulation is necessary to carry out the statutory requirements of section 22819 and to minimize the adverse impact on basic health plan premiums due to the loss of Medicare coordination, which results in higher costs for all basic health plan enrollees and their current or former employers providing health care contributions. Since, many annuitants and their family members do not understand the Medicare coordination process and the ramifications of failing to timely enroll in Medicare Part B, this regulation provides specific procedures and criteria for the members' edification and proper enrollment.

Technical, Theoretical and/or Empirical Studies, Reports or Documents: Not applicable.

Alternatives to the Regulatory Action and CalPERS' Reasons for Rejecting Those Alternatives: CalPERS has considered alternatives to this proposal, and has determined that there is no more effective way to carry out its purpose that would be less burdensome.

Alternatives to the Regulatory Action that Would Lessen any Adverse Impact on Small Businesses: The proposed action has no cost impact on small businesses. The action only impacts the coordination of health benefits for annuitants of the State and contracting agencies and their family members.